

OCBC BANK (MALAYSIA) BHD

a

v.

STEPHEN HANSFORD SALES (M) SDN BHD & ORS
& ANOR SUIT

b

HIGH COURT MALAYA, KUALA LUMPUR
MOHD HISHAMUDIN YUNUS J
[CIVIL SUIT NO: D6-22-2166-2000]
31 JULY 2003

CIVIL PROCEDURE: Preliminary objection - Dismissed by registrar - Whether appealable to judge-in-chambers - Whether decision of registrar a 'judgment, order or decision' within meaning of O. 56 r. 1(1) Rules of the High Court 1980 and s. 3 Courts of Judicature Act 1964 - Whether a 'ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties' - Whether dismissal of defendant's preliminary objection resulted in plaintiff's application for summary judgment being granted or dismissed

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CIVIL PROCEDURE: Appeal - Appeal from registrar to judge-in-chambers - Whether decision of registrar dismissing preliminary objection appealable - Whether a 'judgment, order or decision' within meaning of O. 56 r. 1(1) Rules of the High Court 1980 and s. 3 Courts of Judicature Act 1964 - Whether a 'ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties' - Whether dismissal of defendant's preliminary objection resulted in plaintiff's application for summary judgment being granted or dismissed

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The two appeals herein before the judge-in-chambers were from the decision of the senior assistant registrar ('SAR') dismissing the preliminary objections raised by the defendants at the hearing of the plaintiff's applications for summary judgment. The preliminary objections were that: (i) the plaintiff's summons-in-chambers respecting its O. 14 application was not served on the defendants within 14 days from the date of its issuance; and (ii) the plaintiff's affidavit in support of its application was not served on the defendants. The sole issue that fell for determination in the instant appeals was whether the decision of the SAR was one that was appealable to a judge-in-chambers pursuant to O. 56 r. 1(1) Rules of the High Court 1980 ('RHC').

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a Held (dismissing the appeals):

- [1]** The decision of the SAR dismissing the defendants' preliminary objections was not appealable. This was because the decision was not a 'judgment, order or decision' within the meaning of O. 56 r. 1(1) RHC read together with s. 3 Courts of Judicature Act 1964 ('CJA'). On the contrary, the decision of the SAR was merely a 'ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties'. This was obvious as the dismissal of the defendants preliminary objections did not result in the plaintiff's applications for summary judgment being granted or dismissed, but merely meant that the hearing of the applications would continue before the SAR. (pp 53 g-h, 54 a-h & 55 a-g)

Case(s) referred to:

- Takang Timber Sdn Bhd v. Syarikat Tingan Lumber Sdn Bhd* [2001] 7 CLJ 641 HC (**foll**)
- d** *Teoh Poh Keong Sdn Bhd v. Shinhan Engineering & Construction Co Ltd* [2001] 2 CLJ 440 HC (**foll**)
- The Co-operative Central Bank Ltd v. Choh Hong Kee & Anor* [1999] 1 CLJ 890 HC (**dist**)
- Thong Guan Construction Sdn Bhd v. Shencourt Properties Sdn Bhd* [2001] 5 CLJ 244 HC (**dist**)

Legislation referred to:

Courts of Judicature Act 1964, s. 3
Interpretation Acts 1948 and 1967, s. 21(1)
Rules of the High Court 1980, O. 14, O. 56 r. 1(1)

- f** *For the plaintiff - Nicole Wee; M/s Chooi & Co*
For the defendants - KL Chew; M/s Chew & Lim

Reported by Gan Peng Chiang

JUDGMENT

g Mohd Hishamudin Yunus J:

- h** Enclosure 14 in suit D6-22-2166-2000 (hereinafter shall be referred to as "suit 2166") is an appeal by the defendants in that suit against the decision of the learned senior assistant registrar (hereinafter shall be referred to as "the registrar") given on 27 June 2001 dismissing the preliminary objections raised by the defendants at the commencement of an application (in encl. 4 of the suit) by the plaintiff for summary judgment against the defendants pursuant to O. 14 of the Rules of the High Court 1980 (hereinafter referred to as "the RHC").

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Enclosure 9 in suit D6-22-2167-2000 (hereinafter shall be referred to as “suit 2167”) is an appeal by the defendants in that suit against the decision of the learned registrar given on the same date (ie, 27 June 2001) dismissing the preliminary objections raised by the defendants at the commencement of a similar application (in encl. 3 of the suit) by the plaintiff in that suit. *a*

The preliminary objections raised by the defendants were common for both summary judgment applications (encl. 4 in suit 2166 and encl. 3 in suit 2167), and they were: *b*

- (a) that the summons in chambers for the O. 14 application was not served on the defendants within 14 days of the date of the issuance of the summons; and *c*
- (b) that a copy of the plaintiff’s affidavit in support of the application was not served on the defendants together with the summons in chambers.

Before the learned registrar, the O. 14 applications (encl. 4 of suit 2166 and encl. 3 of suit 2167) were, by consent, heard together. Likewise, the present appeals (to the judge-in chambers) before me were, by agreement of parties, heard together. *d*

I have dismissed the appeals with costs, and I shall now give my grounds. *e*

In these appeals, the issue before me was whether the decision of the learned registrar, in respect of the preliminary objections, is appealable to a judge in chambers pursuant to O. 56 r. 1(1) of the RHC which provides:

**1. Appeals from certain decisions of registrar to judge in chambers.
(O. 56 r. 1)** *f*

An appeal shall lie to a judge in chambers from any judgment, order or decision of the registrar.

I held that the registrar’s decision on the preliminary objections was not appealable. I am of the view that the decision of the registrar in respect of the preliminary objections is not a “decision” for the purpose of the phrase “... judgment, order or decision ...” in O. 56 r. 1(1) of the RHC. The word “decision”, as found in O. 56 r. 1(1), is not defined by the RHC. Therefore, by reason of s. 21(1) of the Interpretation Acts 1948 and 1967 which states: *g*

(1) Terms and expressions used in subsidiary legislation have the same meaning as in the written law under which the subsidiary legislation was made. *h*

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a the interpretation of that word (ie, “decision”) in the rule is governed by the definition of “decision” as found in the parent Act to the RHC, namely, the Courts of Judicature Act 1964 (hereinafter shall be referred to as “the CJA”) (see *Takang Timber Sdn. Bhd. v. Syarikat Tingan Lumber Sdn. Bhd.* [2001] 7 CLJ 641). Section 3 of the CJA defines “decision” as follows:

b “decision” means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties;

c Now, I am, of course, very much conscious of the presence also of the words “... judgment, order ...” in r. 1(1), but I do not propose to indulge in any hair splitting exercise by attempting to explain as to why the decision of the registrar cannot be regarded as a “judgment” or “order”, instead of “decision”, for the purpose of the rule. I feel it would suffice for me just to state that, on this point, I adopt the approach of Richard Malanjum J in *Teoh Poh Keong Sdn Bhd v. Shinhan Engineering & Construction Co Ltd* [2001] 2 CLJ 440. In
d this case cited, the learned judge said (at pp. 443-444):

Now s. 3 of the CJA, as amended, defines the word “decision” thus:

e ‘decision’ means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties;

And O. 56 r. 1 of the Rules of the High Court 1980 (‘RHC’) provides:

1. Appeals from certain decisions of registrar to judge in chambers.
(O. 56 r. 1)

f (1) An appeal shall lie to a judge in chambers from any judgment, order or decision of the registrar. (emphasis added).

g At a glance, it is obvious that it is not only the word ‘decision’ that appears in the said order, but that it is preceded by the words ‘judgment’ and ‘order’. And there are no definitions for the words ‘judgment’ or ‘order’ in the CJA. Neither is there any definition for any of those words in the RHC. In any event, no conflicting definitions should be expected in view of s. 4 of the CJA which provides:

4. Provision to prevent conflict of laws.

h In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act the provisions of this Act shall prevail.

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Thus, I would think that resort should be made to the relevant definition as available in the CJA. But there only the word ‘decision’ has been ascribed with a meaning. As such, one may argue that the words ‘judgment, order or decision’ as found in the said O. 56 r. 1 of the RHC should be read disjunctively thereby allowing appeal to proceed against any judgment or order made by the registrar regardless of it being interlocutory or final in nature. However, if that approach is adopted then the very mischief, that is the filtration of appeals, probably intended to be addressed when amending the definition of the word ‘decision’ under s. 3 of the CJA, would be missed. Thus, I do not think the ‘disjunctive’ approach is in tandem with the legislative intent. Further, the meaning of words grouped together should ‘take as it were their colour from each other’.

In the present case, it is my judgment that the decision of the registrar in respect of the preliminary objections is a (to adopt the relevant words of the definition of “decision” in the CJA) “ruling made in the course of a ... hearing of any ... matter which does not finally dispose of the rights of the parties;”

To my mind the decision of the registrar in rejecting the preliminary objections is a “ruling” for the purpose of the above definition of “decision” in the CJA; and the hearing of the applications for summary judgment before the registrar was “any ... matter”. “Matter” is defined in the CJA as:

“matter” includes every proceeding in court not in a cause;

“Cause” is defined as:

“cause” includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding;

And the hearing before the registrar clearly was one “which does not finally dispose of the rights of the parties”. I say so because the dismissal of the preliminary objections did not result in the applications for summary judgment being granted or dismissed. In other words, it did not result in the final disposal of the summary judgment applications. The dismissal of the preliminary objections merely means that the registrar would be proceeding to hear the applications proper (and in the present case, as a matter of fact, the registrar has yet to do so).

In the case now before me, both the plaintiff and the defendants submitted that the ruling or decision of the registrar on the preliminary objections is appealable, relying on:

a (1) *The Co-operative Central Bank Ltd. v. Choh Hong Kee & Anor* [1999] 1 CLJ 890; and

(2) *Thong Guan Construction Sdn. Bhd. v. Shencourt Properties Sdn. Bhd.* [2002] 5 CLJ 244.

b As to *The Co-operative Central Bank Ltd*, in my opinion, that case can be distinguished on the ground that at the time of the decision of that case, the definition of “decision” in the CJA was not in its present form. The definition of “decision” in the CJA in its present form came about as a result of an amendment to the Act *vide* the Courts of Judicature (Amendment) Act 1998 (Act A1031), which came into force on 1 August 1998.

c As to *Thong Guan Construction Sdn. Bhd.*, I think, that case can also be distinguished. It can be distinguished on the ground that the judgment did not concern an appeal against a registrar’s decision on a preliminary objection. The decision of the registrar in that case, which was the subject-matter of the appeal,

d was a final decision on an interlocutory application proper to amend a summons in chambers.

On my part, for the present decision, I prefer the judgment of Sulaiman JC (as he then was) in *Takang Timber*. That case, like the present case, concerns

e an appeal against a registrar’s decision (or ruling) on a preliminary objection. The preliminary objection in that case was whether certain documents were admissible for the purpose of the hearing of the assessment of damages before the registrar; and the registrar accordingly made a ruling on that issue. Without waiting for the final determination of the hearing on the assessment of damages,

f an appeal was immediately lodged by the dissatisfied party solely on the ruling on the preliminary issue. The learned Judicial Commissioner held that the ruling or decision of the registrar on the issue of the admissibility of the documents was not a “decision” for the purpose of O. 56 r. 1(1) of the RHC and hence, by virtue of the definition of “decision” in s. 3 of the CJA, not appealable.

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